HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 1038 of 2001

Date of Decision : 7th June, 2006

~~A.F.R. (Approved for reporting)~~

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Not approved for reporting.

Date 07/06/06 Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 1038 of 2001

1. Anirudh Krishali
   S/o Mohan Singh Krishali
   R/o Gram Dogari
   Post – Kafal Pani
   District – Tehri Garhwal

2. Pradhuman Singh Krishali
   S/o Mohan Singh Krishali
   R/o Gram Dogari
   Post – Kafal Pani
   District – Tehri Garhwal ….. Applicants

Versus

1. State of Uttaranchal
2. Civil Judge Junior Division, Rishikesh (Dehradun)
3. Additional District & Sessions Judge 4th (FTC) Dehradun
4. M/s Rishi Ganga Investment Ltd.
   Dehradun Road Rishikesh
   Through its Managing Director Vijay Pal Singh Dhanai
   S/o Late Kripal Singh
   R/o 348 Dehradun Road Rishikesh ….. Respondents

Sri J.P. Joshi, learned counsel for the applicants.
Sri H.S. Rawal, learned counsel for the respondent No. 4
Sri L.M. Verma, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

This petition u/s 482 Cr.P.C. has been filed to quash the proceedings of Criminal Case No. 1034 of 1998 M/s Rishi Ganga Investment Vs. Anirudh Krishali and others pending in the court of learned Civil Judge (J.D.)/J.M. Rishikesh and to quash the order dated 02.11.2001 passed by the learned Additional Sessions Judge 4th FTC, in Criminal Revision No. 27 of 2001.

Brief facts for the disposal of this petition are that the complainant-respondent No. 3 lodged a complaint u/s 384, 389, 504 and 506 I.P.C. in the court of learned Civil Judge (J.D.) / J.M.

Rishikesh on 09.06.1998 alleging therein that the accused-applicants were shareholder of the complainant's company and during their tenure they had embezzled the money of the company, therefore, the complainant had withheld their share in the company. Due to embezzlement of the money of the company, the complainant had taken action against the applicants and since then the applicants hold enmity with the complainant. It was further alleged in the complaint that on 02.06.1998, the applicants came to the office of the complainant and demanded the money which the complainant refused and thereafter the applicants hurried the abuses to the complainant and threatened him to kill and they also stated that they will ruin the complainant by filing the cases in different places. The complainant told the applicant No. 1 that this advocate had sent him the notice wherein he had replied his queries. It was also alleged in the complaint that the accused-applicants had threatened the complainant that if he would not pay them ten times of their held shares, they will file forged cases against him and also kill him. Thereafter, the statement of the complainant-Vijay Pal Singh was recorded u/s 200 Cr.P.C. Statement of Mahaveer Saran Nautiyal and Veer Bikram Singh were also recorded u/s 202 Cr.P.C. Thereafter, the learned Magistrate passed the cognizance order dated 28.01.1999 u/s 504 and 506 I.P.C. summoning the accused/applicants. The applicants filed the objection against the summoning order before the learned Magistrate but the same was rejected by the learned Magistrate. Thereafter, revision was preferred before the court of learned Additional Sessions Judge which was also dismissed. Feeling aggrieved by the said order, the present petition has been preferred.

Heard learned counsel for the parties and perused the record.

It was contended on behalf of the learned counsel for the applicants that the Magistrate has taken cognizance u/s 504 and 506 I.P.C. ignoring the statement of Mahaveer Saran Nautiyal and Veer

Bikram Singh recorded u/s 202 Cr.P.C. It was further contended that Mahaveer Saran Natuiyal in his statement recorded u/s 202 Cr.P.C. did not recognize the applicants. He was simply a customer at the spot and he had stated that three persons came there and they hurled the abuses upon the complainant and they stated if their money was not returned, they would implicate him on false case. He further stated that he cloud recognize the accused when they would come before him. The other witness Veer Bikram Singh had stated in his deposition u/s 202 Cr.P.C. that the accused came to the complainant and they demanded 10 times of the money of their share which had been withheld by the complainant. They did not hurl the abuse, they only threatened them to pay the money. It was also contended that the statement of Mahaveer Saran Nautiyal and Veer Bikram Singh recorded u/s 202 Cr.P.C. did not support the prosecution case. He has stated that no abuses were hurried and no intimidation was caused to the complainant. Learned counsel for the respondents refuted the contention and contended that there was a prima-facie case against the accused-applicants. The cognizance order reveals that the learned Magistrate has considered the documents of other cases while considering the evidence against the present accused-applicants. The learned Magistrate while taking the evidence has not applied his mind and he had not put the question to the witnesses to test the veracity of the complaint. Veer Bikram Singh has stated in his statement recorded u/s 202 Cr.P.C. that no abuse was hurled and no intimidation was caused. Whereas Mahaveer Saran Natiyal has stated that he did not know the applicants in his statement recorded u/s 202 Cr.P.C. The Magistrate has not tested the veracity of the complaint by putting the question to the witnesses. In **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705** wherein it has been held as under :-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in brining charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The above proposition of law clearly emphasizes that the Magistrate, while taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant. It is also pertinent to mention here that the averment had been made in the complaint are of vague nature and the learned Magistrate had not considered the evidence in the light of the ingredients of 504 and 506 Cr.P.C. while passing the impugned order.

In view of the foregoing discussion, the cognizance order is bad in law and is liable to be set aside.

The petition is allowed. The Cognizance order dated 28.01.199 passed by the learned Civil Judge (J.D.) Rishikesh in Criminal Case no. 1034 of 1998 is set aside. The case is remanded back to the learned Magistrate. The Magistrate is directed to make the inquiry

afresh and thereafter record the appropriate order in light of the observation made above.

In view of the above, the petition is disposed of accordingly.

All applications pending in this case are stand disposed of in terms of the judgment.

(J. C. S. Rawat, J.)

7th June, 2006
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